

III. PARTIES¹

50. Lexor lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and, therefore, denies them.

51. Lexor admits that it is a California limited liability company having a principal place of business in Orange County. The balance of the allegations set forth in this paragraph require no response, and are denied on that basis.

IV. JURISDICTION AND VENUE

52. Lexor admits that this is an action under the patent laws of the United States. Lexor also admits that this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1338.

53. This paragraph contains no allegation to which a response is required.

V. FACTUAL BACKGROUND

54. Lexor admits that it is the owner of the '655 Patent.

55. Lexor admits that Luraco infringes the '655 Patent. The balance of the allegations set forth in this paragraph require no response, and are denied on that basis.

56. Lexor lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and, therefore, denies them.

57. Lexor admits that it sells a water jet pump under the tradename Ecojet Magnetic Drive but denies that Lexor infringes the '933 Patent.

58. This paragraph contains allegations concerning claim terms that have not been construed. Therefore, no response is required and Lexor denies these allegations on that basis. Lexor further states that it has not, and does not, infringe the '933 Patent.

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¹ For convenience and clarity, Lexor uses the same headings as in Luraco's Counterclaims. Lexor does not admit any of the allegations contained in Luraco's headings.

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135. Denied.

136. Denied.

137. Lexor denies that it sent "threatening letters" but admits that it sent the correspondence attached to Luraco's Counterclaims.

138. Denied.

139. Denied.

VI. COUNTERCLAIMS

A. CLAIM – Infringement of the '933 Patent

140. Lexor herein realleges and incorporates by reference the allegations set forth above and those set forth in Lexor's Complaint, Dkt. No. 1.

141. Denied.

142. Denied.

143. Denied.

B. CLAIM – Declaratory Relief of Non-Infringement of the '655 patent) [SIC]

144. Lexor herein realleges and incorporates by reference the allegations set forth above and those set forth in Lexor's Complaint, Dkt. No. 1.

145. Lexor admits that Luraco purports to seek declaratory judgment but denies that Luraco is entitled to the relief it seeks.

C. CLAIM – Declaratory Judgment of Invalidity of ‘655 Patent

146. Lexor herein realleges and incorporates by reference the allegations set forth above and those set forth in Lexor’s Complaint, Dkt. No. 1.

147. Lexor admits that Luraco purports to seek declaratory judgment but denies that Luraco is entitled to the relief it seeks.

D. CLAIM – Declaratory Judgment of Unenforceability of ‘655 Patent

148. Lexor herein realleges and incorporates by reference the allegations set forth above and those set forth in Lexor’s Complaint, Dkt. No. 1 and admits that the ‘933 patent is unenforceable.

E. CLAIM – False Advertising and Product Disparagement

149. Lexor herein realleges and incorporates by reference the allegations set forth above and those set forth in Lexor’s Complaint, Dkt. No. 1.

150. Denied.

151. Denied.

152. Denied.

153. Denied.

154. Denied.

155. Denied.

156. Denied.

157. Denied.

158. Denied.

159. Denied.

160. Denied.

F. CLAIM – Intentional Interference with Existing Business Relations

161. Lexor herein realleges and incorporates by reference the allegations set forth above and those set forth in Lexor’s Complaint, Dkt. No. 1.

162. Denied.

163. Denied.

164. Denied.

165. Denied.

G. JURY DEMAND

166. Lexor hereby demands a jury trial on all claims so triable.

H. PRAYER FOR RELIEF

167. Lexor denies that Luraco is entitled to any of the relief sought by way of its Counterclaims. Lexor prays for the following relief:

- (a) Judgment on Luraco's counterclaims entered against Luraco and for Lexor;
- (b) A determination that this is an "exceptional case" pursuant to 35 U.S.C. § 285 and an award to Lexor of its reasonable legal fees, costs, and expenses incurred in defending this action;
- (c) A determination that this is an "exceptional case" pursuant to 15 U.S.C. § 1117(a) and an award to Lexor of its reasonable legal fees, costs, and expenses incurred in defending this action; and
- (d) Such other and further relief as this Court or a jury may deem proper and just.

AFFIRMATIVE DEFENSES TO LURACO'S COUNTERCLAIMS

FIRST AFFIRMATIVE DEFENSE

(Non-Infringement)

1. Lexor has not infringed and is not infringing, either directly, contributorily, or by inducement, any valid or enforceable claim of U.S. Patent No. 9,926,933 ("933 patent").

SECOND AFFIRMATIVE DEFENSE

(Invalidity)

2. One or more of the claims of the '933 patent are invalid for failing to meet one or more of the statutory requirements and/or conditions for patentability under 35 U.S.C. §§ 101, 102, 103, and/or 112.

THIRD AFFIRMATIVE DEFENSE

(No Injunctive Relief)

3. Luraco is not entitled to injunctive relief because any alleged injury to Luraco is neither immediate nor irreparable, and Luraco has an adequate remedy at law.

FOURTH AFFIRMATIVE DEFENSE

(Constitutional Bar)

4. Luraco's claims are barred by the United States Constitution, including but not limited to the First Amendment, in that Luraco seeks to hold Lexor liable for activity protected under the First Amendment.

FIFTH AFFIRMATIVE DEFENSE

(Prosecution History Estoppel)

5. By reason of the proceedings in the U.S. Patent and Trademark Office ("USPTO") during the prosecution of the application resulting in the issuance of the '933 Patent, namely, the admissions, representations, and amendments made on behalf of the application for this patent, Luraco is estopped from extending the coverage of the asserted claims in the '933 Patent to cover the accused instrumentalities.

SIXTH AFFIRMATIVE DEFENSE

(Acquiescence, Estoppel, Waiver or Laches)

6. Upon information and belief, Luraco has made claims that are barred in whole or in part by the doctrines of acquiescence, estoppel, laches, and waiver.

SEVENTH AFFIRMATIVE DEFENSE

(35 U.S.C. § 287 – Failure to Mark)

7. Luraco's claims for damages as to the '933 Patent is barred, in whole or in part, for failure to comply with 35 U.S.C. § 287.

EIGHTH AFFIRMATIVE DEFENSE

(Failure to State a Claim Upon Which Relief Can Be Granted)

8. Luraco has failed to state a claim upon which relief may be granted.

NINTH AFFIRMATIVE DEFENSE

(Statute of Limitations)

9. Some, if not all, of Luraco's claims for relief are barred, in whole or in part, by the applicable statute of limitations.

TENTH AFFIRMATIVE DEFENSE

(Innocent Infringement)

10. Luraco's claims for relief are barred because the alleged infringement, if any, was innocent and not willful.

ELEVENTH AFFIRMATIVE DEFENSE

(Absence of Irreparable Harm)

11. Luraco's claims for injunctive relief are barred because Luraco will not suffer any irreparable harm and has an adequate remedy at law.

TWELFTH AFFIRMATIVE DEFENSE

(No Causation)

12. Luraco's claims are barred because Luraco's alleged injury and/or damages, if any, were not caused by Lexor. Luraco's claims are also barred, in whole or in part, because Lexor is not liable for acts of others over whom it has no control.

THIRTEENTH AFFIRMATIVE DEFENSE

(No Damages)

13. Luraco's claims are barred because there has been no damage in any amount by reason of any act alleged against Lexor.

FOURTEENTH AFFIRMATIVE DEFENSE

(Intervening Rights)

14. Luraco's allegations are limited by Lexor's absolute and equitable intervening rights.

RESERVATION OF ADDITIONAL DEFENSES

15. Lexor reserves any and all additional defenses available under Section 35 of the United States Code, the rules, regulations, or laws related thereto, the Federal Rules of Civil Procedure, the Rules of this Court, and/or otherwise in law or equity, now existing, or later arising, as may be discovered.

LEXOR'S COUNTERCLAIMS

Lexor alleges Counterclaims against Luraco as follows:

NATURE OF THE ACTION

1. On information and belief, according to the allegations set forth in Luraco's Counterclaims, Luraco is the owner of the entire right, title, and interest in and to US Patent No. 9,926,933 ("933 Patent").

2. Luraco has accused Lexor of infringing the '933 Patent. Lexor denies that any of its products infringe any valid or enforceable claim of the '933 Patent.

3. An actual case or controversy exists between the parties concerning the infringement of one or more of the claims of the '933 Patent, and that controversy is ripe for adjudication by this Court.

PARTIES

4. Lexor is a California corporation with its principal place of business in Orange County, California.

5. On information and belief, according to the allegations in Luraco's Counterclaim, Luraco is a Texas corporation with its principal place of business in Arlington, Texas.

JURISDICTION AND VENUE

6. This are counterclaims for a declaration of non-infringement and invalidity of one or more claims of the '933 Patent. This Court has subject matter jurisdiction over these counterclaims pursuant to 28 U.S.C. §§ 1331, 1338, 2201, and 2202.

7. This Court has personal jurisdiction over Luraco because Luraco has already submitted to the jurisdiction of this Court asserting counterclaims.

8. Venue for these counterclaims is legally proper in this District pursuant to 28 U.S.C. § 1367 and 1391.

FIRST COUNTERCLAIM

(Declaration of Non-Infringement of the '933 Patent)

9. Lexor herein realleges and incorporates by reference the allegations set forth above and those set forth in Lexor's Complaint, Dkt. No. 1.

10. Lexor has not infringed and is not infringing, either directly, contributorily, or by inducement, any valid or enforceable claim of the '933 Patent.

11. To resolve the legal and factual questions raised by Luraco and to afford relief from the uncertainty and controversy that Luraco's actions have precipitated, Lexor is entitled to declaratory judgment that it has not infringed and is not infringing, directly, or indirectly, any valid or enforceable claim of the '933 Patent.

SECOND COUNTERCLAIM

(Declaration of Invalidity of the '933 Patent)

12. Lexor herein realleges and incorporates by reference the allegations set forth above and those set forth in Lexor's Complaint, Dkt. No. 1.

13. One or more claims of the '933 Patent are invalid for failing to meet one or more of the requisite statutory and decisional requirements and/or conditions for patentability under one or more of 35 U.S.C. §§ 101, 102, 103, and/or 112.

14. To resolve the legal and factual questions raised by Luraco and to afford relief from the uncertainty and controversy that Luraco's actions have precipitated, Lexor is entitled to declaratory judgment that the '933 Patent is invalid.

PRAYER FOR RELIEF

WHEREAS, LEXOR requires that this Court enter a judgment in its favor and against Luraco as follows:

- (a) Dismiss Luraco's counterclaims in their entirety, with prejudice;
- (b) Enter judgment in favor Lexor and against Luraco;
- (c) Declare that the '933 Patent has not been infringed by Lexor.
- (d) Declare that the '933 Patent is invalid.
- (e) Declare that this is an exceptional case under 35 U.S.C. § 285 and award Lexor its costs, including expert fees, disbursements, and reasonable attorneys' fees incurred in this action; and
- (f) Grant such further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

In accordance with Federal Rule of Civil Procedure 38(b), Lexor hereby demands a trial by jury on all issues so triable.

Respectfully submitted,



By:

Andy Nikolopoulos
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FOX ROTHSCCHILD LLP
10250 Constellation Blvd.
Suite 900
Los Angeles, CA 90067
310/228-4483
310/556-9828 – Fax

Attorneys for Lexor Manufacturing, LLC

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of October, 2018, a true and correct copy of the above and foregoing document was served upon counsel of record via ECF service.



Andy Nikolopoulos